

ClearComm

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August 7, 1997

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BY HAND

Jon C. Garcia
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AUG - 7 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: PCS C Block
WT Docket No. 97-82**

Dear Mr. Garcia:

Our purpose in writing is to set forth the reasons why ClearComm, L.P., opposes any substantially penalty-free "amnesty" and reauction of FCC licenses as a panacea to address financial difficulties that certain C Block licensees apparently have experienced. ClearComm opposes any such amnesty and reauction because that would lead to further delays in general deployment of C Block systems and, consequently, to a decrease in license value for those entrepreneurs - - like ClearComm - - that do not intend to surrender their licenses.

ClearComm wants to construct and provide service in its 15 markets. An amnesty and reauction - - unless a substantial penalty is attached to the surrender of any license - - would tend to reward those existing C Block licensees whose planning has left them unable to access the capital markets and vendor financing. These licensees would have the FCC, through a reauction, bear the brunt of market risk that the licensees themselves apparently do not wish to shoulder and, particularly in the light of delay, permit them to obtain possibly lower prices in the reauction.

ClearComm recognizes that a limited amnesty program may be the solution of last resort if the only other alternative for some licensees is bankruptcy. But the Commission must structure its approach so as to preserve the essential integrity of the designated entity auction. Those C Block licensees who can go forward to develop their markets must be encouraged to do so. For these reasons, ClearComm respectfully urges the Commission to adopt the following balanced approach:

1. **If the Commission does not adopt an amnesty program**, ClearComm believes that the two-year waiver of interest proposal which we filed with the Commission last week (a copy is attached) provides the many C Block licensees who

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August 7, 1997
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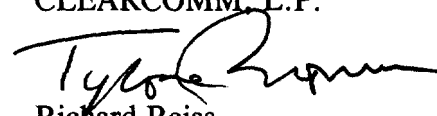
want to go forward the time that they need to rebuild confidence in the financial markets. ClearComm's proposal, including the accelerated buildout feature, will also further the Commission's goal of providing service to consumers as quickly as possible and will permit the markets (rather than the FCC) to decide which C Block licensees will succeed.

2. If the Commission decides that an amnesty of some sort is necessary, ClearComm believes that licensees who take advantage of any such amnesty (i) must be required to surrender all of their licenses in exchange for forgiveness of the FCC license debt, (ii) must not be accorded designated entity status in any future auction, and (iii) must not receive credit in any future auction for more than 50% of their downpayment under the current license debt obligations to the Government.

In sum, ClearComm urges the Commission not to entertain a wholesale retreat from existing rules under the guise of an "amnesty". The Commission should not give any licensee an opportunity to "game" the system. The Commission should not place ClearComm and similarly situated entrepreneurs, that may be on the verge of obtaining financing, in the position of having to surrender their licenses, to assure that their prices are competitive in the light of developments that no one can now predict. Rather, the Commission should send a clear signal that, while a limited amnesty is preferable to bankruptcy, the FCC remains committed to new entry and competition among PCS service providers.

Sincerely,

CLEARCOMM, L.P.


Richard Reiss
John Duffy
Tyrone Brown
(202) 828-4926

Enclosure

cc: Secretary to the Commission
Peter Tenhula, Office of the General Counsel
Rudolfo Baca, Legal Advisor to Commissioner Quello
Suzanne Toller, Special Advisor to Commissioner Chong
David R. Siddall, Legal Advisor to Commissioner Ness
Kathleen O'Brien Ham, Wireless Telecommunications Bureau
International Transcription Service

CLEARCOMM, L.P.

DUPLICAT

July 30, 1997

FEDERAL COMMUNICATIONS
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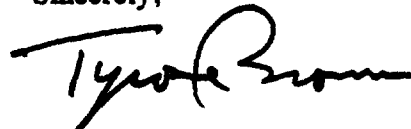
Re: WT Docket No. 97-82
DA 97-679

Gentlemen:

Thank you for meeting with me and Messrs. Duffy and Lamoso of ClearComm yesterday to discuss difficulties that entrepreneurial C Block companies such as ClearComm are facing in seeking financing to develop their PCS markets. Enclosed is a summary of our views on minimal steps the Commission clearly can take now to demonstrate its commitment to minority ownership and effective competition among PCS service providers.

We wish to emphasize that FCC delay in acting on the proposals before the Agency can by itself create uncertainty in the financial markets that will adversely affect the ability of any C Block licensee to obtain necessary capital.

Sincerely,



Tyrone Brown
Senior Vice President
CLEARCOMM, L.P.

cc: Chairman Hundt
Commissioners
Dan Phythyon
Kathleen O'Brien Ham
Catherine Sandoval
Sande Taxali
International Transcription Service, Inc.

CLEARCOMM, L.P.

R: WT Docket No. 97-82
DA 97-679

SUMMARY OF COMMENTS OF EX PARTE MEETING With John Garcia, Peter Tenhula, FCC July 29, 1997

1. **Support for MCI Proposal.** ClearComm continues to believe, as stated in its Comments, that MCI's proposal for restructuring of C Block license debt, described in its May 1, 1997 letter to the Commission, is consistent with the public interest, the underlying statutory mandate and the goals the Commission sought to advance in establishing the Entrepreneurial Block of PCS licenses. These licensees have demonstrated their commitment by paying \$1 billion into the U.S. Treasury. For the most part, those who oppose relief seek to stifle nascent competition. The Commission should address any equitable concerns for F block licensees in an expedited, separate Public Notice proceeding.
2. **Request for Expedited Action.** Uncertainty is now adversely affecting the ability of any C Block licensee to obtain financing. The Commission should act swiftly to restore certainty for licensees and the financial markets. Extended proceedings will actually decrease the value of C Block licenses as entrenched operators increase their lead over entrepreneurs in the marketplace.
3. **Alternative Minimal Proposal.** If the FCC concludes that further consideration is required to implement major restructuring, ClearComm believes the Commission can and should take the following minimal steps now on the basis of the record before it.
 - (a) **Annualization of Interest.** The Commission should act now to place license debt installment payments on an annual basis. This involves no real loss to the Treasury (since interest appears to have been computed on an annual basis), and the Agency can make this change without modifying its Rules.

(b) **Partial Interest Waiver/Acceleration of Buildout.** The Commission should state that it is willing to waive interest payments for the first year where licensees agree to meet their 5-year buildout requirements in four years or less. Similarly, the Agency should waive interest payments for the second year where licensees commit to reach the 5-year goal in three years or less. Such a waiver would be available only if the licensee demonstrates (by certification from its independent auditors) that it has raised funds sufficient for the interest payments and has committed to devote such funds to license development and construction. Thus, licensees would have to show real progress in developing their markets before the waiver would become available and the Commission would further its overriding goal of providing services to consumers as quickly as possible. If the licensee does not meet the accelerated buildout schedule, the waiver(s) would lapse and interest payments for the one-or two-year period would become automatically due and payable.

(c) **Relaxation of Transfer Restrictions.** The Commission should permit C Block licensees, after three years from the date of license grant, to transfer their licenses to nondesignated entities, as long as the license debt is paid off in cash. This will create a "market" for the licenses, but at the same time provide a reasonable three-year opportunity for the entrepreneurial licensee (or another entrepreneurial licensee as transferee) to develop its market. To avoid unjust enrichment, a licensee that takes advantage of this provision would forego any profit in the transaction, but the nondesignated entity that acquires the license would not be required to repay the so-called "benefit" represented by the 25% bidding credit in the C Block auction. Within the meaning of the statute, there is no "unjust enrichment" to the purchasing nondesignated entity. Limited waivers as proposed would represent a significant FCC action in support of C Block licensees and PCS competition. Such waivers will permit the markets (rather than the FCC) to determine which licensees merit further financial backing. Such limited action is far superior to forcing a massive reauction of C Block licenses.

(d) **Permitting Development of Individual Licenses on a Project Finance Basis.** The Commission has asked for comment on the cross-collateralization of licenses - - the possibility that a default in one market would permit the FCC to revoke licenses held by the same entity in other markets (even if there is no default in those markets). Existing security agreements do not provide for such cross-collateralization, and it does not appear that the Government intended to extend its security interest in each particular license to all other PCS licenses held by a designated entity. The FCC should make its position clear on this issue. Further the Commission should make clear that, with appropriate assurances, it will permit an entity to transfer each PCS license and installment note to a separate qualifying subsidiary, in order to permit new investors to finance a particular market without being responsible for the license debt on other markets in which they have not invested. Without the ability to finance each market separately, C Block licensees would face a virtually insurmountable hurdle. The Commission can condition approval of any transfer to a separate licensee upon the express commitment of the original licensee pay over any profits received by it in a particular market to satisfy its license debt in all other markets.

* * *

ClearComm believes that the steps described above will provide flexibility for most C Block licensees to develop their markets, while permitting the FCC to avoid the delay and waste that would inevitably result from any wholesale reauctioning of licenses.

CLEARCOMM, L.P.

John Duffy
Javier Lomoso
Tyrone Brown